

**BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES**

In the Matter of the)	SUMMARY OF FACTS
Complaint Against)	AND
Shirley Nelson)	STATEMENT OF FINDINGS

Willard J. "Woody" Michels filed a complaint against Shirley Nelson alleging that she violated Montana campaign finance and practices laws when she published an item in a newspaper.

SUMMARY OF FACTS

1. Willard J. "Woody" Michels, a realtor in Plentywood, Montana, was an unsuccessful candidate for House District 97 in the 2000 general election.

2. Shirley Nelson worked as a realtor for Michels. Nelson retained Williston, North Dakota attorney Greg Hennessy to represent her in a dispute with Michels regarding Michels' alleged failure to pay Nelson a real estate commission.

3. On October 17, 2000, Hennessy sent a letter to Michels demanding payment of \$9,625.00 for the real estate commission alleged to be owed by Michels to Nelson.

4. When Michels refused to pay the disputed amount following receipt of the letter from Hennessey, Nelson and Hennessy compiled a document that they referred to as a "press release," which stated:

PRESS RELEASE

Dated:10/30/00

FOR IMMEDIATE RELEASE

Contact: Shirley Nelson at (406) 765-7200 cell of Plentywood, MT or
Greg Hennessy at (701) 572-8296

Willard "Woody" Michels a candidate for House District #97 is being sued for unpaid real estate commissions by Shirley Nelson, his former long-time

real estate agent. Mrs. Nelson was employed ten years with Michels Agency and Realty.

Mrs. Nelson is bringing a lawsuit after being unpaid by Michels for one year on a \$10,000 commission received in the sale of the Golden Wheel night club in 1994. Michels has refused to answer a formal demand letter requesting payment which would have prevented a lawsuit and has not denied the validity of Mrs. Nelson's claim for payment. Michels has not responded to earlier attempts at informal dispute resolution.

Michels campaign ads refer to him as the longest working crop insurance agent in Montana.

5. Nelson and Hennessy submitted the "press release" to two Plentywood newspapers, the *Sheridan County News* and the *Greeter*. The *Sheridan County News* declined to publish the press release. The *Greeter* published an edited version of the press release in its October 31, 2000 edition:

Note: Willard "Woody" Michels is being sued for unpaid real estate commissions by Shirley Nelson, his former long-time real estate agent. Mrs. Nelson was employed ten years with Michels Agency and Realty. Mrs. Nelson is bringing a lawsuit after being unpaid by Michels for \$10,000 commission in the sale of the Golden Wheel Night Club in 1994. Michels has refused to answer a formal demand letter requesting payment which would have prevented a lawsuit and has not denied the validity of Mrs. Nelson's claim of payment. Michels has not responded to earlier attempts at informal dispute resolution.

6. Richard Rice, owner and publisher of the *Greeter*, was unable to recall and had no documentation to establish whether or not Nelson paid to have the press release published. Hennessey, on Nelson's behalf, submitted a written response to the complaint contending that Nelson did not pay to have the press release published.

7. On October 31, 2000, when the press release was published in the *Greeter*, no formal complaint had been filed against Michels in any court for recovery of the disputed real estate commission.

STATEMENT OF FINDINGS

Although the complaint does not specify which statutes Nelson is alleged to have violated, Michels makes two contentions: 1) the press release was a paid political

advertisement which should have included a disclosure stating who paid for the ad; and
2) the press release contained factually false information.

Montana Code Annotated § 13-35-225 provides:

Election materials not to be anonymous. (1) Whenever a person makes an expenditure for the purpose of financing communications advocating the success or defeat of a candidate, political party, or ballot issue through any broadcasting station, newspaper, magazine, outdoor advertising facility, direct mailing, poster, handbill, bumper sticker, or other form of general political advertising, the communication must clearly and conspicuously state the name and address of the person who made or financed the expenditure for the communication, including in the case of a political committee, the name and address of the treasurer. Communications in a partisan election financed by a candidate or a political committee organized on the candidate's behalf must state the candidate's party affiliation or include the party symbol.

(2) If a document or other article of advertising is too small for the requirements of subsection (1) to be conveniently included, the person financing the communication shall file a copy of the article with the commissioner, together with the required information, prior to its public distribution.

(3) If information required in subsection (1) is inadvertently omitted or not printed, upon discovering the omission, the person financing the communication shall file notification of the omission with the commissioner within 5 days and make every reasonable effort to bring the material into compliance with subsection (1).

Nelson may have made an expenditure to finance the communication reflected by the published "press release," since she presumably paid her attorney, Hennessey, for his assistance in composing the writing; however, this communication did not "advocate the success or defeat of a candidate." To be reportable as an "independent expenditure" under Montana laws and regulations, the communication would have to expressly advocate the success or defeat of a candidate. See Administrative Rules of Montana §§ 44.10.323(3) and 44.10.531(4). Thus, no disclosure indicating who financed the communication was required.

The complaint also alleges that the press release published in the *Greeter* contained false information. It does not specify what provision of Montana law was

allegedly violated. Two sections of Montana law within my jurisdiction prohibit false statements or misrepresentations in campaigns. Montana Code Annotated § 13-35-234 prohibits any person from 1) making a false statement or charge “reflecting on any candidate’s character or morality,” or 2) knowingly misrepresenting “the voting record or position on public issues of any candidate.” This statute obviously does not address the conduct alleged in the complaint. The only allegedly false statement in the press release that Michels complains about is the statement claiming that Nelson was “bringing a lawsuit” against Michels. Michels contends that, since no formal complaint had been filed, the statement is false; however, even if Michels’ contention is correct, such a statement does not misrepresent Michels’ voting record or position on public issues, nor does it reflect on Michels’ character or morality.

The other statute that prohibits false statements is Montana Code Annotated § 13-37-131, which provides in part:

(1) It is unlawful for a person to misrepresent a candidate’s public voting record or any other matter that is relevant to the issues of the campaign with knowledge that the assertion is false or with a reckless disregard of whether or not the assertion is false.

Violation of Montana Code Annotated § 13-37-131 can result in a civil penalty of up to \$1,000. Again, however, the allegedly false statement at issue does not misrepresent Michels’ voting record or “any other matter that is relevant to the issues of the campaign.”

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CONCLUSION

Based on the preceding Summary of Facts and Statement of Findings, there is insufficient evidence to justify a civil or criminal prosecution based on allegations that Shirley Nelson violated Montana campaign finance and practices laws.

Dated this _____ day of July, 2001.

Linda L. Vaughey
Commissioner